

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ROGELIO MUÑOZ, #585137 §  
VS. § CIVIL ACTION NO. 6:07cv55  
DAVID FORTNER §

ORDER OF DISMISSAL

Plaintiff Rogelio Muñoz, a prisoner confined in the Texas prison system, proceeding *pro se* and *in forma pauperis*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint was referred to United States Magistrate Judge John D. Love, who issued a Report and Recommendation concluding that the complaint should be dismissed. The Plaintiff has filed objections.

The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration, and having made a *de novo* review of the objections raised by the Plaintiff, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections by the Plaintiff are without merit.

The records in this case reveal that the Plaintiff filed the civil rights lawsuit against six people. The claims against five people were severed from the lawsuit and transferred to the appropriate court. The remaining defendant in this lawsuit was Physicians Assistant David Fortner. On February 5, 2007, the Court issued an order to the Plaintiff to file an amended complaint showing how Fortner was deliberately indifferent to his serious medical needs. He was warned that the lawsuit may be dismissed if he failed to file an amended complaint within thirty days from the receipt of the order. On February

28, 2007, an order was issued extending the deadline for compliance to April 10, 2007. He did not file an amended complaint. On April 12, 2007, the Report and Recommendation was filed to dismiss the case without prejudice for failure to prosecute. In his objections, the Plaintiff specified that he finished his amended complaint on April 5, 2007, and gave it to prison officials to mail to the Court. The Court never received an amended complaint from the Plaintiff. The records of the Court reveal, however, that the Plaintiff filed a new lawsuit, Civil Action Number 6:07cv170, on April 10, 2007. The lawsuit did not reference the present case. It was filed on the standardized civil rights lawsuit form for initiating a new lawsuit. Besides David Fortner, the Plaintiff sued five other Powledge Unit employees. The case was referred to Magistrate Judge Guthrie, who has issued orders for the processing of the case. It is clear that the Plaintiff did not follow the instructions issued in this case. It is equally clear that he will not be harmed by having the present case dismissed and permitting him to proceed in Civil Action Number 6:07cv170. The Court is of the opinion that the Report and Recommendation is correct and that the objections lack merit. Therefore the Court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is accordingly

**ORDERED** that the complaint is **DISMISSED** without prejudice for failure to prosecute. Fed. R. Civ. P. 41(b); Rule 41, Local Rules for the Eastern District of Texas. All motions by either party not previously ruled on are hereby **DENIED**.

**So ORDERED and SIGNED this 3rd day of May, 2007.**



LEONARD DAVIS  
UNITED STATES DISTRICT JUDGE  
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